IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO 2789 of 2004
with
CIVIL APPLICATION NO 9562 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VARSHABEN MAHENDRAKUMAR SACHANIYA
Versus
RAHIMBHAI JILMAHMADBHAI DHEBA

Appearance:
1. First Appeal No. 2789/04 with CA 9562/04
MR CL SONI for Appellant No.
..... for Respondent No. 1
MR SUNIL B PARIKH for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 20/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Opponent No.1 - Rahimbhai Jilmahmadbhai Dheba, workman filed Workmen Compensation (non-fatal) Application No.56 of 2000 before the Court of Workmen Compensation Commissioner, claiming compensation worth Rs.3 lacs for the injuries received by him during accident while on duty. Learned Commissioner by his impugned Judgment and order dated 23.3.2004 allowed the application and ordered opponent No.2 National Insurance Co. Ltd. to pay Rs.3,12,350/- to the workman. However, the learned Commissioner ordered the present appellant Varshaben Mahendrakumar Sachaniya - owner - original opponent No.2, to pay interest at the rate of 9 % p.a. on the said amount and also to pay penalty at the rate of 25 per cent.

2. This Appeal is preferred by the appellant - original opponent No.2 Varshaben only on the point of interest on the amount awarded by the learned commissioner.

3. It was submitted by learned Counsel Shri Soni for the appellant that learned Commissioner wrongly relied on the Judgment of the Hon'ble Supreme Court in Writ Petition (Civil) No.341/03 (P.J.NARAYAN v/s. UNION OF INDIA & ORS., reported in 2004 ACJ 452) in not holding the Insurance Company liable to pay the interest on the amount awarded. He submitted that in view of the Judgment of the Hon'ble Supreme Court in the case of VED PRAKASH GARG v/s. PREMI DEVI, reported in 1998 ACJ 1 (SC) the Insurance Company has to pay the interest on the amount awarded. The said Judgment was subsequently followed by the Apex Court in its later decision of L.R.FERROR ALLOYS LTD. v/s. MAHAVIR MAHTO & ANR., reported in 2001 ACJ 645.

4. From the Judgment of the Hon'ble Supreme Court in P.J.Narayan case (supra) referred to by the learned Commissioner, we find from the brief Judgment of the Hon'ble Supreme Court in the said P.J.Narayan case (supra) that writ petition was filed before the Hon'ble Supreme Court for the purpose of directing the Insurance Co. to delete the clause in the Insurance Policy which provides that in case of compensation under the Workmen's Compensation Act, 1923, the insurance company will not be liable to pay interest. Dealing with the said contention the Hon'ble Supreme Court observed that there is no statutory liability on the Insurance Co. However, previous two Judgments of the Hon'ble Supreme Court in VED PRAKASH GARG (Supra) and L.R.Ferror Alloys Ltd. (supra) were not considered wherein the Hon'ble Supreme

Court has clearly held that the Insurance Co. is also liable to pay interest on the awarded amount. In view of these two direct Judgments of the Hon'ble Supreme Court Shri Parikh, learned Counsel for the Insurance Company was hardly in a position to defend the order passed by the learned Commissioner whereby the learned Commissioner held the Insurance Co. not liable to pay the interest on the amount awarded and ordered to pay the interest on it to the present appellant.

5. Thus, the important substantial question of law arise in this Appeal, namely, whether the learned Commissioner committed error in not holding the Insurance Company liable to pay interest awarded on the amount and saddling the appellant to pay interest amount, is a substantial question of law, is required to be decided by this Court in this Appeal filed by the Workman under the Workmen Compensation Act.

6. In view of the aforesaid two direct Judgment of the Hon'ble Supreme Court in the case of VED PRAKASH GARG & L.R.FERROR ALLOYS LTD. (supra), it must be held that the learned Commissioner has committed grave error in not holding the Insurance Co. liable to pay the interest at the rate of 9 % on the amount awarded.

7. Accordingly, this Appeal is allowed and the Respondent No.2 - National Insurance Co. is also held liable to pay interest at the rate of 9 % p.a. on the awarded amount of Rs.3,12,350/- to the respondent No.1 workman and to indemnify the same. Rest of the order passed by the learned Commissioner is not disturbed. The Appeal is allowed accordingly. No order as to costs.

On the request of learned Counsel Shri Parikh for the respondent - Insurance Co. Eight weeks time is granted to the respondent No.2 - Insurance Co. to deposit the interest amount before the learned Commissioner.

No further order is required to be passed on Civil Application No.9562 of 2004 as the main Appeal is allowed. Accordingly, Civil Application No.9562/04 is disposed of. No order as to costs.

(B.J.Shethna, J.)

Date : April 20, 2005

(M. C. Patel, J.)

sas